



**Before the Committee of the Whole  
Council of the District of Columbia  
Public Hearing Regarding Bill 24-553:  
Public Health Emergency Credit Alert Amendment Act of 2021  
November 18, 2022**

**Testimony of Tzedek DC, Legal Aid of the District of Columbia, and Legal Counsel for the Elderly**

Chairman Mendelson, Members of the Council of the District of Columbia, and Committee staff:

Thank you for your leadership and for the opportunity to provide testimony on the proposed Public Health Emergency Credit Alert Amendment Act of 2021 (the “Bill”). Thanks as well to Councilmember Robert C. White, Jr. for sponsoring the original temporary and emergency versions of the Covid credit alert protection, and to all the members of the Council for unanimously passing the temporary version of this bill. As three legal services organizations serving DC residents facing debt and credit-related problems, Tzedek DC,<sup>1</sup> Legal Aid of the District of Columbia,<sup>2</sup> and Legal Counsel for the Elderly<sup>3</sup> submit this testimony in strong support of the Council promptly making these protections permanent.

As detailed below, (i) the financial harms from the public health emergency will last for many more years, and are an issue of racial justice; (ii) the temporary act has already proven that the protections help residents with no unreasonable burdens on consumer reporting agencies; (iii) this protection is exactly the type of state-level leadership on credit reporting issues on top of a federal floor that the lead federal regulator, the U.S. Consumer Financial Protection Bureau (“CFPB”), has encouraged, and D.C. can continue to be a leader; and (iv) the Bill’s notice provisions improve the existing temporary protections.

1. The Financial Harms from the Public Health Emergency Will Last for Many More Years, and Are An Issue of Racial Justice

The Covid pandemic exacerbated the economic vulnerability that many D.C. residents already experienced leading up to the pandemic. Residents with lower incomes were more likely to become infected with Covid due to lack of access to medical care and jobs that did not allow social distancing. This led to a drop in household incomes and a resulting increase in unpaid or late payment of bills. Each late or unpaid bill created a negative mark on that consumer’s credit report. Credit report impairment is an issue of racial justice nationally and

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<sup>1</sup> Tzedek DC’s mission is to safeguard the legal rights and financial health of DC residents with lower incomes facing the often-devastating consequences of debt collection and credit-related obstacles.

<sup>2</sup> Legal Aid of the District of Columbia was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” The largest part of Legal Aid’s work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. Legal Aid also works on immigration law matters and helps individuals with the collateral consequences of their involvement with the criminal justice system.

<sup>3</sup> Legal Counsel for the Elderly (“LCE”) champions the dignity and rights of the District of Columbia’s lower-income elderly, helping our city’s vulnerable seniors resolve problems concerning their basic legal needs each and every day. Each year, LCE volunteers and staff assist nearly 5,000 vulnerable seniors in DC, providing an array of intersecting and complementary services (legal, psychosocial, financial, and educational).

especially in DC, where, as Urban Institute data has shown, DC residents from our communities of color have almost four times as high a rate of debts in collection as do white DC residents.<sup>4</sup>

Credit reports are the gateway for residents to access rental housing, loans, mortgages, and, in some cases, a job. The Council recognized that consumers should not further suffer from negative credit marks that were the result of financial hardships caused by the Covid public health emergency. Accordingly, in 2020, the Council provided for DC residents to add a Covid emergency credit alert to their credit reports, and prohibited certain users of credit reports from considering adverse information that was the result of the public health emergency if the credit report includes such personal statement (the “Temporary Act”).<sup>5</sup> This temporary protection is currently slated to expire on January 29, 2023 and, even if temporarily extended, will lapse next year absent action by this Council.

However, credit reports generally include details regarding payments for seven years, and therefore DC residents will suffer from the inclusion of Covid-related financial events on their credit reports through at least 2027. The Bill would protect consumers from public health emergency credit harms -- including those that may arise from future public health emergencies -- on a permanent basis. Without renewing and making this protection ongoing, the economic consequences of the pandemic will begin to and continue to haunt those residents for years to come because of the lasting negative mark it will leave on their credit reports.

## 2. The Temporary Act Has Protected Consumers without Burden to Industry

For many years prior to the pandemic, the credit reporting agencies have had in place a system for consumers to add personal statements to their credit reports, so the Temporary Act did not present a new burden for the industry. The credit reporting agencies have been complying with the Temporary Act for over two years and continuing to allow and/or maintain the public health emergency personal statements should not be a burden to the industry. As expected, there have been no legal challenges about the DC protection since the Temporary Act was passed.

Tzedek DC, Legal Counsel for the Elderly, and Neighborhood Legal Services Program developed a website in both English and Spanish for DC residents to add their Covid personal statements to their credit reports. That website has been accessed more than 900 times to date. Tzedek DC is prepared to continue to assist the community in filing their personal statements, and to support the Council in letting the community know about the protection as it becomes permanent.

## 3. The CFPB Has Encouraged States to Protect Consumers from Credit Reporting Harms

The Director of the CFPB stated this year that: “Given the intrusive surveillance that Americans face every day, it is critical that states can protect their citizens from abuse and misuse of data.”<sup>6</sup>

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<sup>4</sup> As of June 23, 2022, 9% of White communities in the DC have debt in collections, compared with 35% of communities of color. Urban Institute: Debt in America: <https://apps.urban.org/features/debt-interactive-map/?type=overall&variable=totcoll&state=11>.

<sup>5</sup> Covid-19 credit report protections were originally enacted as part of the Coronavirus Temporary Amendment Act of 2020 (D.C. Law 23-130, effective Oct. 9, 2020 (67 D.C.R. 8022)), and were included in several successive pieces of legislation, most recently in the Public Health Emergency Credit Alert Temporary Amendment Act of 2022 (D.C. Law 24-110, effective Apr. 8, 2022 (69 D.C. R. 3713)).

<sup>6</sup> <https://www.consumerfinance.gov/about-us/newsroom/cfpb-affirms-ability-for-states-to-police-credit-reporting-markets/>.

The CFPB recently issued an interpretive rule (“CFPB Interpretive Rule”)<sup>7</sup> providing: “State laws relating to what or when items generally may be initially included on a consumer report—or what or when certain types of information may be initially included on a consumer report—would generally not be preempted by section 1681t(b)(1)(e) [of the Fair Credit Reporting Act (“FCRA”)]”. This confirms and reinforces the validity of the D.C. provision permitting a consumer to file a personal statement on their credit report indicating that they have been financially impacted by a public health emergency.

Further, the CFPB Interpretive Rule specifies that “States therefore retain substantial flexibility to pass laws involving consumer reporting to reflect emerging problems affecting their local economies and citizens.” The DC protections are a good example of an exercise of this “flexibility to pass laws involving consumer reporting to reflect emerging problems affecting” DC residents.

#### 4. The Bill’s Notice Provisions Better Protect Consumers

The Bill also builds on the Temporary Act in an important way by allowing consumers to provide a written statement explaining that they have experienced a financial hardship as a result of the public health emergency directly to the user of a credit report in lieu of filing a personal statement with the credit reporting agency. This matters for consumers applying for rental housing. Prospective landlords often pull credit reports that are not from the “big 3” credit reporting agencies where DC residents may have filed their public health emergency personal statement. The CFPB identifies ten tenant screening companies that provide such tenant screening credit reports.<sup>8</sup> The direct notice provision of the Bill will protect consumers where a credit report is pulled from one of these many specialty credit reporting agencies as long as the consumer submits a personal statement directly to the prospective landlord, and with no action by the credit reporting agencies.

The Bill is important to protecting vulnerable DC consumers from the financial harms caused by the public health emergency, and the Council should pass it.

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<sup>7</sup> The Fair Credit Reporting Act’s Limited Preemption of State Laws, § I, issued by the Bureau of Consumer Financial Protection on June 28, 2022, (12 CFR Part 1022) (emphasis added), available at <https://www.consumerfinance.gov/rules-policy/final-rules/the-fair-credit-reporting-acts-limited-preemption-of-state-laws/> (“CFPB Interpretive Rule PDF”).

<sup>8</sup> [https://files.consumerfinance.gov/f/documents/cfpb\\_consumer-reporting-companies-list\\_2022-01.pdf](https://files.consumerfinance.gov/f/documents/cfpb_consumer-reporting-companies-list_2022-01.pdf).